IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 380 OF 2003

The State of Maharashtra ... Appellant

Vs.

Subhash Narayan Bartakke & Ors. ... Respondents

Mrs. M.H.Mhatre, APP, for the Appellant-State.

Mr. Rupesh Bobde i/b. Umesh R.Mankapure for Respondents 1 to 3.

CORAM: J.H.BHATIA,J.

DATE : 12th June, 2007.

P.C.

1. Heard Mrs. Mhatre, learned APP for State and Mr. Rupesh Bobde for Respondents 1 to 3.

2. Respondents Nos. 1 to 3 were prosecuted for the offences punishable under Sections 498A, 306 read with Section 34 of I.P.C. and by Judgment dated 29.10.2002, they were acquitted. The prosecution seeks leave to prefer an appeal against the acquittal.

3. According to the prosecution, deceased Hema was married to accused NO.1 - Subhash about 1-1/2 year

before her death. Her sister, Manju, was married to accused No.2. Accused Nos.1 and 2 are brothers and accused No.3 is their mother. On 30.8.1998, Hema, wife of accused No.1, immolated herself and she was taken to the Civil Hospital at Sangli where she died on the next day. Her two dying declarations were recorded - one by police and another by the Special Executive Magistrate. According to the prosecution, the accused persons used to beat and ill-treat her and, therefore, she committed suicide.

4. The learned Assistant Sessions Judge, Sangli, observed that in both the dying declarations, there is not a whisper of ill-treatment against the mother-in-law, accused No.3. The dying declarations only reveal that accused No.1 used to tell Hema that he did not like her and he wanted to enter a second marriage. Accused No.2 had assaulted his mother, accused No.3 and, therefore, Hema had intervened. Due to this reason, accused No.2 - Dilip had assaulted and beaten Hema. Due to this and due to the fact that her husband had told her that he would marry another woman, she got angry and immolated herself. The learned Assistant Sessions Judge held that there was no evidence on record to show that the accused persons used to beat and ill-treat and had subjected her to cruelty. The reasons given by her in the dying declarations also do

not make out a case of cruelty which would amount to abetment to commit suicide.

5. I have carefully gone through both the dying declarations as well as the reasons given by the trial Court while acquitting the accused persons. I find no fault in the order passed bythe trial Couert. In fact, there was no allegagtioon of ill-treatment against accused No.3, mother-in-law. The allegation against accused No.2 was only that he had beaten Hema because she had intervened while accused No.2 was beating his mother. Such stray incident may take place in life of anybody, but that does not amount to such a cruelty, as defined in Section 498A I.P.C. Similarly, merely because the husband had expressed his desire to enter into second marriage, it cannot be inferred that he had subjected her to such a cruelty which would induce her to commit suicide or to cause any grievous hurt or harm to herself. It appears that due to the stray incident, Hema got angry and in the heat of anger, she ablazed herself.

6. In view of the above circumstances, I find no substance in the Appeal. In the result, leave to prefer appeal is refused.

The Appeal stands dismissed.

(J.H.BHATIA,J.)